IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3969 OF 2005

Arjun Vithal Sapkal ..Petitioner.
Vs.
Sriram Aba Jadhav & Ors. ..Respondents.

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Mr. A.S. Khandeparkar for the Petitioner.
Mr. A.A. Kumbhakoni with Mr. T.D. Deshmukh for Respondent Nos.1 to 5.

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CORAM: DR. D.Y. CHANDRACHUD, J.
20th June, 2006.

P.C. :

1. A decree for eviction was passed by the Trial Court on the ground that the landlord bonafide needs the premises for the use and occupation of himself and the members of his family. The decree has been confirmed in appeal.

2. The evidence on the record shows that the family of the landlord includes his wife, an elder son and daughter-in-law and two other sons and the grand daughter. The landlord was residing together with his family in one room situated in a chawl. The premises which form the subject matter of the suit for eviction are situated adjacent to the room where the landlord resides together with the members of his family. On these facts the Trial Court and

the Appellate Court held that the need of the landlord was reasonable and bonafide. On the other hand, in so far as the comparative hardship is concerned, it has been found that the First and the Third Defendants have sufficient funds so as to enable them to obtain alternate accommodation elsewhere.

3. On behalf of the Petitioner it has been submitted that during the pendency of the appeal before the District Court an application was filed for amendment of the written statement. The application was rejected. Now the contention of the Petitioner is that by the application for the amendment of the written statement, the Petitioner had sought to place on record the circumstances and events which took place after the filing of the appeal. There was according to the Petitioner a change in circumstances in so far as the family of the landlord was concerned. The eldest sons of the landlord who is employed is stated to have been transferred to Pune together with his family. The second son who is serving as a clerk in a college is stated to have purchased residential accommodation. Finally, it is submitted that another tenant of the landlord had vacated the premises in his occupation which were of the same dimensions as the suit premises. Learned counsel

submitted that in order to establish these circumstances, the proceedings should be remanded back to the Appellate Court with a direction to record additional evidence and to enter a finding of fact thereon.

4. In considering the tenability of the aforesaid submission, it is necessary to note that the fundamental principle of law is that the bonafide requirement of the landlord has to be examined as on the date of the institution of the proceedings. The crucial date is the date of the institution of the proceedings. Subsequent events may be taken into consideration for moulding the reliefs provided such events have a material impact on the rights and obligations which are crystalised on the institution of the proceedings. Particularly in the context of disputes between landlords and tenants, the Supreme Court has taken notice of the fact that as a result of the long pendency of litigation a number of developments do take place over which parties have no control and a landlord who needs possession on the ground of bonafide requirement should not be penalised for delays of the system over which he has no control. Therefore the Courts have to take a pragmatic view. The delays in the process of litigation cannot be made the basis for

denying relief to the landlord. However, in certain exceptional cases subsequent events may be such as to overshadow the genuineness of the need of the landlord. However, it is only if they are of such a nature or dimension as to completely eclipse the need of the landlord, that the Court would be justified in taking them into consideration. These principles emerge inter alia from the judgments of the Supreme Court in **Pratap Rai Tanwani v. Uttam Chand**[1], **Gaya Prasad v. Pradeep Srivastava**[2] and **Sait Nagjee Purushotham v. Vimalabai Prabhulal**[3]. Indeed that is also the basis on which it has been held that the death of the landlord during the pendency of an appeal preferred by a tenant will not make any difference as regards the entitlement of his heirs to defend the estate. In this category of cases it has been held that the crucial date is the date of the application for eviction since it is from that date that the tenant incurs the liability of being evicted from the premises.

5. Now the facts of the present case must be considered having regard to the principles of law enunciated by the Supreme

1 (2004) 8 SCC 490.
2 (2001) 2 SCC 604.
3 (2005) 8 SCC 252.

Court. Taking the case of the tenant at its highest, it has been averred that (i) One of the sons of the landlord had been transferred to Pune in connection with his employment; (ii) Another son had obtained accommodation of his own; and (iii) The landlord had acquired vacant possession from the tenant by the name of Raghunath Mahajan. In this regard in the affidavit that has been filed on behalf of the landlord in these proceedings it has been accepted that the eldest son of the Respondent landlord has been transferred to Pune by his employer where he is temporarily residing. That, however, does not detract from the requirement of the landlord in as much as his family consists of seven persons. In so far as the acquisition of the premises by the second son is concerned, though there is a denial that the landlord has acquired any alternate accommodation, even if the need of the second son is to be excluded from consideration, it cannot be said that the requirement of the landlord and his family is extinguished. The fact still remains that the landlord is in occupation of only one room. Considering the size of the family of the landlord and the accommodation in his possession, it cannot be said that the existing premises are adequate to meet the requirement of the family. The allegation that the landlord obtained vacant

possession from another tenant has been controverted in the reply. The landlord has stated that the aforesaid tenant has not vacated his premises and the electricity bill continues to stand in his name. But, apart from the denial it is undisputed that the suit premises are adjacent to the premises where the landlord is presently residing. The landlord is the best judge of his need and the manner in which he is to fulfill it. There is nothing oblique about the need of the landlord for premises in close proximity to his existing room for accommodating the members of his family. The need is reasonable and bonafide. In these circumstances, even if the case sought to be established in the application for the amendment of the written statement, during the pendency of the appeal, were to be accepted, the subsequent developments do not extinguish the requirement of the landlord.

6. For all the reasons, there is no merit in the Petition which shall accordingly stand dismissed.

7. However, in the facts and circumstances of the case, time to vacate the premises is granted to the Petitioner until 30th November, 2006, subject to the filing of the usual undertaking

within a period of two weeks from today.